

## REMARKS

Claims 114 and 131 have been canceled.

Claims 108, 125 and 142 have been amended to include a step stating that in the absence of the protein:antibody complex, the animal being tested is vaccinated against herpesvirus. Support for such a vaccination step can be found in the specification, for example, on page 30, lines 7-18. Thus, Applicants submit no new matter has been entered into the application.

### I. Rejections Under 35 USC §103 – Obviousness

The Examiner has rejected claims 108-146 as being obvious over Hoffmann-Lehmann *et al.*, in view of Prud'homme *et al.*, and Maeda *et al.* The Examiner states that Hoffman-Lehmann *et al.* describe a method of determining the prevalence of antibodies to feline herpesvirus using ELISA and IFA. The Examiner further states that while Hoffman-Lehmann *et al.* use crude antigens instead of recombinant antigen, Prud'homme *et al.* describe a competitive ELISA for detecting alphaherpesvirus antibodies using recombinant herpesvirus glycoprotein antigen gp50. Additionally, the Examiner states that Maeda *et al* disclose the nucleotide sequence (and therefore the corresponding amino acid sequence) of FHV type I glycoprotein C which aligns with the instantly claimed SEQ ID NO:22. The Examiner concludes it would have been obvious to use the protein of Maeda in the assay of Hoffmann-Lehmann instead of any herpesvirus antigen since Maeda suggests the application of this protein as an important subunit vaccine in immunity for FHV-1 infection in cats.

Applicants previously argued that none of the prior art references correlate the presence of antibodies to herpesvirus protein in an animal with the need to vaccinate that animal and thus the prior art references fail to teach every element of the claimed invention. In response, the Examiner states that such limitations were not given any weight since they are an intended use for an old method and if the prior art method is capable of performing the intended use then it meets the claim limitation. The Examiner further states that a recitation of the intended use of a claimed invention must result in a technical difference between the claimed invention and the prior art.

Applicant's interpretation of the Examiner's comments is that if one combined the prior art teachings as suggested by the Examiner (which Applicants maintain is not an obvious combination), the resultant method would produce the same result as the claimed method,

namely a determination of the presence or absence of antibodies to herpesvirus. It is Applicants' further understanding that since vaccination of an animal is stated in the preamble of the instant claims and not as a method step, it is not a limitation but rather an intended use. Thus both the claimed method and the prior art method yield the same result and both could have the same intended use.

In view of the Examiner's comments, Applicants note the claims have been amended to include a vaccination step. Specifically, claims 108 and 125 now state that in the absence of a protein:antibody complex, the animal is to be vaccinated against herpesvirus. Similarly, claim 141 states that if the reference signal is greater than the test signal, the animal is to be vaccinated against herpesvirus. Thus, Applicants contend the claimed method results in a technical difference from the method of the prior art. Further, since none of the prior art references teach or even suggest vaccinating an animal against herpesvirus, particularly in view of the result of the stated method, Applicants contend that the instantly claimed method is non-obvious over the cited prior art.

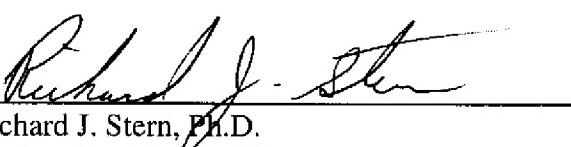
In view of the above, Applicants request withdrawal of the obviousness rejection under 35 U.S.C §103(a).

### CONCLUSION

All of the pending Claims are believed to be in condition for allowance. In the event the Examiner has any questions regarding this Application, the Examiner is invited to contact the undersigned representative at (970) 493-7272, ext. 4174.

Respectfully submitted,

Dated: May 11, 2007

By:   
Richard J. Stern, Ph.D.  
Registration No. 50,668  
Heska Corporation  
3760 Rocky Mountain Avenue  
Loveland, Colorado 80538  
Telephone: (970) 493-7272, 4174  
Facsimile: (970) 619-3011